



Request for Proposals (RFP)

No. 2022-01

Mississippi Office of Workforce Development
AccelerateMS

Administrative Project Management Office

PROPOSAL SUBMISSION DEADLINE: May 27, 2022 - 12:00 PM CDT

SCOPE OF SERVICES

The Mississippi Department of Employment Security (hereinafter MDES), in collaboration with the Office of Workforce Development (hereinafter *AccelerateMS*), requests proposals for services to provide a Third-Party Administrative Project Management Office (hereinafter PMO) for MDES.

Specific Services to be Provided:

1. Ensure compliance and adherence to all United States Department of the Treasury Regulations and Program Requirements related to the American Rescue Plan Act (hereinafter ARPA), through a review and understanding of ARPA program compliance issues, public laws which represent the appropriation of federal ARPA dollars, as well as applicable state laws and regulation
2. PMO support for projects outlined in House Bill 1517, passed by the Mississippi Legislature during the 2022 regular session to support workforce development activities in the areas of healthcare, emerging sectors, logistics and supply chain, and specific populations, health sciences training infrastructure, and career coaching; and for similar workforce development bills related to workforce development, and for related purposes
3. Assess the capabilities of prospective contractors/subgrantees, prior to distribution of ARPA funding, to ensure the ability to meet national objectives. Perform steps to identify specific, logical connections to a national objective for each activity including steps to verify the eligibility of proposed activities as well as steps to evaluate the prospective contractor/subgrantee's overall organizational capacity
4. Prepare unique agreements written in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement for each contractor/subgrantee that is a concise statement of the relationship and the conditions under which funds are provided

Each agreement will include:

- A description of the work to be performed
- A schedule for completing the work and a budget
- A statement of the intent of the grant, key information, general provisions, scope of work, program requirements, performance indicators and benchmarks, documentation for pre-award, post-award actions such as payment, documentation and end-of-award activities, closeout, audit, and continuing responsibilities

Each agreement will specify the particular records the contractor/subgrantee must maintain and the particular reports the contractor/subgrantee must submit in order to assist the grantee in meeting its recordkeeping and reporting requirements

5. Conduct periodic training for contractors/subgrantees on compliance issues and local administrative practices

6. Ensure that all contractors/subgrantees comply with all regulations governing their administrative, financial, and programmatic operations and achieve their performance objectives on schedule and within budget
7. Provide support of MDES's management system that involves an ongoing process of planning, implementation, communication, and follow-up. The objectives for programmatic/contractual oversight and monitoring will be:
 - To determine if a contractor/subgrantee is carrying out its program as described in its contract or subgrantee agreement
 - To determine if a contractor/subgrantee is carrying out its scope of work in a timely manner
 - To determine if a contractor/subgrantee is conducting the project with adequate control over program and financial performance and in a way that minimizes the opportunity for fraud, waste, and abuse
 - To assess if the contractor/subgrantee has a continuing capacity to carry out the approved project
 - To identify problem areas and assist the contractor/subgrantee in complying with the program requirements
 - To provide adequate follow-up measures to ensure that performance and compliance deficiencies are corrected and not repeated
8. Report any identified or suspected instances of non-compliance with applicable laws, rules, and policies to MDES
9. Perform oversight of the distribution of funds which will include two key components - documentation compliance and distribution oversight:
 - All documentation that supports activity expenditures must accompany every request for payment
 - An internal financial management team will collect, scan, and then review for completeness, compliance and accuracy all pay request documents
 - Because of the requirements of the Office of Management and Budget (OMB), draw down timing management is a key component of the distribution oversight which includes significant penalties imposed on grantees when federal funds remain undistributed longer than the regulations allow

- Avoid any loss of funding by implementing a monitoring system that tracks the time lapse between draw down and disbursement and warn the program manager of any potential issues

10. Document Control and Management

- Provide sufficient, appropriate document control and management to meet the financial and documentation requirements for ARPA. At a minimum, the following records would be required from each grant or program manager:
 - Records providing full description of each activity
 - Records verifying that activity meets national and grant objectives
 - Records related to demonstrating eligibility of activities
 - Financial records and reports required by the program
 - Performance reports required by the program
 - Records supporting any specific requirements of the grant

11. Program Development and Support

- Monitor performance of each contract/grant using the reporting and performance benchmarks that are established
- Provide analysis of key performance indicators to MDES to provide insight into issues or performance problems that may be occurring.

12. Policy Development and Review

- Develop and monitor required policies for each contract/grant agreement

13. Support of Program and Financial Compliance Requirements

- Assist MDES in support of program and financial compliance requirements. Identify applicable compliance requirements, and as requested, provide resources to work on any compliance issues that are identified during program management; assist in the preparation of financial reports for compliance with grant reporting requirements including the review and set up of proper accounting records and documentation

14. Communications

- Provide accurate, timely information to appropriate individuals, departments, and agencies

15. Internal Communication

- Monitor certain key indicators at the request of MDES:

- Status by contract/grant, including monitoring of the budget, schedule, and performance metrics
- Issues impacting each contract/grant, including reported problems, lagging performance, communication issues, etc., and the actions being taken to resolve them
- Identification of risks associated with each contract/grant and the actions being taken to mitigate, avoid or reduce them
- Deliverables completed to date and those scheduled for completion
- Resources available to deliver services, including staff, technology, and budget; identify restraints affecting delivery and institute corrective action
- Informal communication will be frequent and will also include telephone calls and emails

16. External Communication

- Provide information for MDES and *AccelerateMS* to utilize in external communications which is a critical part of the process and provide status reports on a regular basis
- Assist MDES and *AccelerateMS* in support of external communications to include designing and publishing packets, reports, and presentations for legislative and congressional constituents
- Assist in planning, publicizing, and delivering news releases and conferences and provide web content for MDES and *AccelerateMS* websites

17. Support of Monitoring Plans and Execution

- Ensure that all stakeholders, including the program managers, are aware of and compliant with any regulatory requirements associated with ARPA funds. Monitor the action and communication plans associated with each contract/grant to ensure that all key performance indicators are being properly monitored and that issues are addressed quickly and resolved effectively
- Ensure timely submission of required reporting including financial reports, performance reports, resolution of findings, resolution of recommended changes, implementation of policies, and resolution of issues affecting performance
- As requested by MDES, conduct desk reviews of the documentation supporting the program reports for accuracy and compliance
- Develop compliance checklists for program managers to assist with their compliance with the program requirements
- Ensure proper documentation at all levels, not only for the proper dissemination of information, but also to serve as a historical reference for post-project reviews

18. Support of Program Operations, as required

- Provide any operational support as requested by MDES, including full project management, policy development or other support and consulting roles
- Provide resources to provide operational and managerial services quickly and effectively at all levels of the programs to MDES

19. Program Management Team Support

- As requested by MDES, provide additional resources to any program team member or program grant to appropriately and timely respond to program management needs

20. IT Oversight and System Development

- Perform comprehensive monitoring of all existing systems, connections and automated processes currently deployed amongst the contract/grant programs
- Provide IT developers to respond timely to development needs on the existing systems as well as any systems previously implemented

21. Training/Outreach Support

- Train and develop team members to meet performance objectives and ensure compliance. When major changes in program policy or requirements occur, prepare the necessary training materials and program to effectively communicate the changes

22. Change Control

- Maintain and monitor the established change management process that contributes to the achievement of a project's objectives – this process shall be modified, as needed, communicating and documenting the process while ensure any changes are properly researched and evaluated

23. Coordinate with MDES to identify the critical performance benchmarks for each project so progress can be tracked, communicated, and assessed at any time while ensuring all project information is always available in one comprehensive, user-friendly electronic environment

Financial information will include:

- The overall status of the contractor/subgrantees' ARPA funds, showing cumulative amounts for ARPA funds approved to date, program income received to date, actual disbursements to date, ARPA funds on hand at time of request, and requests previously submitted but not disbursed
- For each activity or budget category the budgeted amount, the ARPA funds drawn to date, the grant funds expended to date, and the current request for payment. Source

documentation will be requested to support the expenditures claimed by contractors/subgrantees. From this information, determine the contractors/subgrantees' rates of spending in their various activity areas or budget categories and whether they are using their program income in a timely fashion and drawing down appropriate amounts of grant funds

24. Oversight of Overall Program

- Project performance benchmarks and updated budget comparisons will be established to measure progress and compliance with critical objectives in mind
- Critical stages will be identified, and a monitoring checkpoint will be established to ensure follow up
- Communication plan will be developed to match the program's objectives and will include a formal structure for regular reporting, performance milestones, project-wide meetings, and policies on information for the community and press
- Assist in the preparation and dissemination of policy memoranda related to program requirements and implementation

25. Reporting

- Provide status reports on a regular basis to keep MDES informed of the project progress
- As requested, meet with MDES to discuss the status of the project, contractor/subgrantee concerns, and any other issues that may have arisen during the administration of the program
- Provide MDES with project progress reports on demand, as well as access to the project management system, so the project can be monitored - report information will include project activity deemed critical by MDES
- In addition to keeping MDES informed of the progress with each project, compile and review information necessary to prepare reports required under U.S. Department of the Treasury regulations

26. Closeout

- Ensure that all closeout forms are completed as required
- OMB Circular No. 133 compliant documents and reports will be maintained and provided in order to satisfy U.S. Department of the Treasury and other federal audit requirements resulting in an audit ready financial report of all activities of the grantee and Sub-grantee including electronic copies of all supporting documents

27. Transition

- It is the intent of MDES that during the initial period of this Contract, the Contractor will develop and reduce to writing, in consultation with MDES, a plan to transition the activities covered under this Contract to MDES to the extent possible
- This transition plan should create the processes and procedures required to responsibly transition project management oversight, document control and maintenance, monitoring, regulatory compliance, and eligibility verification to MDES
- During the term of the Contract, the Contractor shall place emphasis on closing out projects and programs in accordance with federal and state guidelines

TIMELINE

Submission Deadline

May 27, 2022 - 12:00 PM CDT

SUBMISSION REQUIREMENTS

Proposals shall be submitted no later than the time and date specified for receipt and must be submitted electronically to bids@mdes.ms.gov. Due to time constraints, Proposals will only be accepted electronically. Hand delivered Proposals will not be accepted.

CONTRACT DURATION

The timeline of this contract will be from July 1, 2022 – June 30, 2023, with the possibility of further extensions until December 31, 2026, conditioned upon the receipt of funds and satisfactory performance during prior years as determined by *AccelerateMS*.

COMPENSATION

Compensation for services will be in the form of a **fixed price**. Proposals should include one (1) fixed price which encompasses all tasks outlined in this RFP and all miscellaneous expenses required to fulfill the obligations of the resulting contract.

AccelerateMS may negotiate and/or solicit a Best and Final Offer (BAFO) from one or more of the vendors. The RFP, its amendments, the vendor's proposal, and BAFO shall constitute the contract.

CONTRACT ADMINISTRATION

The contract awarded subsequent to this solicitation shall be administered by MDES in conjunction with the Office of *AccelerateMS*. The selected contractor will be reimbursed for allowable costs that have been identified and approved in a contract that the selected contractor and Office of *AccelerateMS* have negotiated and executed. Contractors will be required to maintain documentation necessary to support each cost.

AccelerateMS agrees to pay Contractor in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as

amended, which generally provides for payment by the State within forty-five (45) days of receipt of the invoice. Contractor understands and agrees that *AccelerateMS* is exempt from the payment of taxes. All payments shall be in United States currency.

EVALUATION

The evaluation committee will use the following criteria to evaluate all acceptable proposals:

- Proposal demonstrates a clear understanding by the vendor of the Scope of Work and its objectives – **20 Points**
- Proposal includes quality control methods and assurances of fully performing the Scope of Work – **20 Points**
- Sufficient evidence of experience, knowledge, and professional competence by the respondent with respect to the requirements set forth in the Scope of Services – **20 Points**
- Competitiveness of the fixed price commensurate with the level of experience demonstrated by the respondent's proficiency and understanding of the requirements set forth in this RFP – **35 Points**
- Conformance with RFP instructions – **5 Points**

ATTACHMENT A

Required Clauses for Service Contracts Resulting from this Solicitation

1. Acknowledgement of Amendments. Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the bid form, by letter, or by signing and returning Attachment G. The acknowledgement must be received by MDES by the time and at the place specified for receipt of bids.
2. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of Hinds County. Contractor shall comply with applicable federal, state, and local laws and regulations.
3. Availability of Funds. It is expressly understood and agreed that the obligation of the Agency to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
4. Compliance with Laws. Contractor understands that the Agency is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
5. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*
6. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and

Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- a. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- b. the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- c. both.

In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

7. Paymode. Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

8. Procurement Regulations. The contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>.

9. Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid.

10. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board's Office of Personal Service Contract Review's Rules and Regulations*.

11. Stop Work Order.

a. *Order to Stop Work:* The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:

- i. cancel the stop work order; or,
- ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

b. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- i. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
- ii. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

c. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

12. Termination for Convenience.

a. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

b. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

13. Termination for Default.

- a. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- c. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- d. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- e. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and

obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

f. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

14. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by Agency upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

15. Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

16. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

ATTACHMENT B

Optional Clauses for Use in Service Contracts Resulting from this Solicitation

1. Anti-assignment/Subcontracting. Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
2. Approval. It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.
3. Attorney's Fees and Expenses. Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.
4. Authority to Contract. Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.
5. Information Designated by Contractor as Confidential. Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret, or confidential commercial or financial information.

Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this agreement.

6. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that Agency is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to Agency pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, Agency shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Agency shall not be liable to the Contractor for disclosure of information required by court order or required by law.

7. Contractor Personnel. The Agency shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the Agency reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost to the Agency. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

8. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief, that it:

- (1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- (2) has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
- (3) has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
- (5) has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

9. Disclosure of Confidential Information. In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

10. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which:

- (1) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
- (2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
- (3) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- (4) is independently developed by the recipient without any reliance on confidential information;
- (5) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
- (6) is disclosed with the disclosing party's prior written consent

11. Errors in Extension. If the unit price and the extension price are at variance, the unit price shall prevail.

12. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the Agency, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Agency may have.

13. Failure to Enforce. Failure by the Agency at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Agency to enforce any provision at any time in accordance with its terms.

14. Final Payment. Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to the Agency a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State's claims against Contractor under this contract.

15. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

16. HIPAA Compliance. Contractor agrees to comply with the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data

interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.

17. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

18. Independent Contractor Status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Agency shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the Agency shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

19. Integrated Agreement/Merger. This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

20. (Contract Modification means any written alteration in contract requirements, deliverables, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. Modifications must be approved by the PPRB pursuant to Section 7-111 (Modifications) of the Mississippi Public Procurement Review Board's Office of Personal Service Contract Review's Rules and Regulations. Modifications shall not grant extra

compensation, fee, or allowance to any Contractor after service is rendered or contract is made, unless contemplated within the contract itself or unless the scope of services is increased.) Modification or Renegotiation. This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.

21. No Limitation of Liability. Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.

22. Notices. All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

23. Non-solicitation of Employees. Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.

24. Oral Statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Agency and agreed to by Contractor.

25. Ownership of Documents and Work Papers. Agency shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to Agency upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from Agency and subject to any copyright protections.

26. Priority. The contract consists of this agreement with exhibits, the procurement Request for Proposals 2020-01 (hereinafter referred to as RFP), and the response (hereinafter referred to as Proposal). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the Proposal. Omission of any term or obligation from this agreement shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

27. Quality Control. Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained

describing the disposition of all complaints. The records so created shall be open to inspection by the Agency.

28. Record Retention and Access to Records. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three-year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three-year period, whichever is later.

29. Recovery of Money. Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the Agency, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the Agency. The rights of the Agency are in addition and without prejudice to any other right the Agency may have to claim the amount of any loss or damage suffered by the Agency on account of the acts or omissions of Contractor.

30. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the Agency, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

31. Right to Inspect Facility. The State may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the State.

32. Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

33. State Property. Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

34. Third Party Action Notification. Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

35. Unsatisfactory Work. If, at any time during the contract term, the service performed or work done by Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare

of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.

36. Waiver. No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

37. Requirements Contract. During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that the Agency shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the Agency for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the Agency is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the Agency may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.